IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5478 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANTINIKETAN COOP HOUSING SOCIETY LTD.

Versus

DISTRICT REGISTRAR CO-OP. SOCITIES

Appearance:

1. Special Civil Application No. 5478 of 2000

MR MIHIR H JOSHI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

Mr.Girish Patel for MR SHALIN N MEHTA for Respondent No. 2-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 29/04/2002

C.A.V.JUDGEMENT

Rule. Mr.I.M.Pandya, Ld.AGP waives service of rule on behalf of respondent No.1 and Mr.Girish Patel, Sr.Counsel for Mr.Shalin Mehta waives service of rule for

respondent No.2 & 3. With the consent of parties matter is being disposed of finally.

2. The short facts of the case are that the petitioner is a Housing Cooperative Society duly registered under the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as the "Act"). One Gopalbhai Narottamdas Mehta was the member of the petitioner-Society and he was allotted shares by the petitioner-society and in capacity as a shareholder of the petitioner-society said Gopalbhai Mehta was also allotted Plot No.4 in the petitioner-society and he had constructed residential house over the said plot on 8.1.1981. Gopalbhai during his life time at the age of about 80 years executed a registerd will for creating a trust after his death for the benefit of members of his family. On 31.5.90 Gopalbhai died and as per respondent Nos 2 and 3 the property of Gopalbhai vests with them as the trustees of the trust created under the aforesaid will. In the year 1994 probate was issued by the City Civil Court, Ahmedabad. Since one of the trustees, i.e. Naresh H.Shah, the respondent No.2 herein, the permission was obtained by him to work as the trustee of Shri Gopalbhai Narottamdas Mehta Family Trust (hereinafter referred to as "the Trust"). The trustees as per Indian Trust Act, 1882(hereinafter referred to as "the Trust Act") were holding the property and therefore that they had to for for transfer the aforesaid property and the shares of the society and an application was made by respondent Nos 2 & 3 to the society with a request to transfer the shares on their names. The society continued to make correspondance from 24.5.95 onwards. Thereafter, on 27.8.95 the Secretary of the pettiioner society addressed a letter intimating that as per the legal opinion the shares can be transferred on the name of the trustees of the trust once such family trust is formed after due permission of the Reserve Bank of India. In response to the same the respondent No.2 addressed a letter dated 30.8.95 stating, interalia, that the permission has been granted by the Reserve Bank of India for respondent No.2 to work as a trustee since he is a Non-Resident Indian (hereinafter referred to as "NRI"). Thereafter, on 20.2.96 the society addressed a letter to the respondent No.3 to produce fresh set of papers which ultimately came to be submitted by respondent Nos 2 and 3. Not only that but the respondent Nos 2 & 3 submitted written opinion of Juistice B.J.Diwan (Retd), Chief Justice of Gujarat High Court daated 10.2.1997 opining that the respondent Nos 2 & 3 can not compel the society to recognise them as executor instead of recognising them

as trustees and further tht one of the trusteees alone can not represent the trust property in view of the will. Further opinion of Shri S.N.Shelat, Sr.Advocate, dated 12.9.97 was also submitted opining that the respondent Nos 2 & 3 can function as trustees and the society is also bound to transfer the shares in favour of trustees on the basis of probate,. Thereafter, on 2.2.98 a letter was addressed by the society to respondent Nos 2 & 3 requesting that their proposal to transfer the property on the name of trustees shall be placed in the next meeting of the Managing Committee and it was also stated that in the meantime the respondent Nos 2 & 3 may sign and return in duplicate the undertaking as per the enclosed draft so that necessary procedure can be taken up as early as possible. On 4.2.98 a letter was addressed by respondent Nos 2 & 3 to the society stating that they are not agreeable to sign the undertaking to abide by all the approved rules, regulations and bye laws of the society for transfer of the bungalows on their names. Thereafter, on 30.4.98 a letter was addressed by the society to the District Registrar requesting for opinion and permission to transfer the property on the name of trustees and in the said letter it was stated interalia that as per the opinion of legal adviser of the society the property can not be transferred on the name of trustees of the trust because one of the trustees, i.e. the respondent No.2 herein, is a French citizen and not a domicile of India. In the said letter there was also a reference that as per the opinion of Shri B.J.Diwan, Retd.Chief Justice of Gujarat High Court that the respondent No.2 can be call as a domicile of India because he has not relinquished his Indian Domicile and therefore the guidance and opinion was sought for from the District Registrar.

3. Since the question regarding the domicile was raised in the letter dated 30.4.98 of the society, the District Registrar, the respondent No.1 herein, addressed a letter dated 22.7.98 stating that the power to take decision is vested in the Civil Court and after the decision is obtained from the Civil Court, proper action may be taken for membership. Said letter of the District Registrar was forwarded to respondent Nos 2 & 3 as per their letter dated 12.8.98 and therefore the respondent Nos 2 & 3 addressed a letter dated 30.10.98 stating that the City Civil Court, Ahmedabad had already issued probate in their favour on 12.8.94 and the respondent Nos 2 & 3 have authority to represent the property as per the will. Thereafter, the District Registrar, i.e. the respondent No.1 herein addressed a letter dated 2.11.1998 to the petitioner society stating that as the probate has

been issued by the City Civil Court and as per the will the respondent Nos 2 & 3 are the executors and the trustees, the necessary action may be taken for admitting their name as the members. Thereafter, a meeting of the Executive Committee of the petitioner society was held on 11.8.98 and vide resolution No.2 a decision was taken to transfer the shares on the name of respondent Nos 2 & 3 as the trustees of the trust. Thereafter, on 10.2.98 in response to resolution dated 18.11.1998 the shares were submitted by respondent Nos 2 & 3 for transferring and ultimately as per letter dated 18.12.1998 the procedure for transfer of shares was completed and the shares after transfer were returned back by the society to respondent Nos 2 & 3 and on account of such transfer on 28.12.1998 necessary transfer fee was also paid by respondent Nos 2 & 3 to the petitioner society.

4. Thereafter, on 20.10.1999 the Asst.T.D.O of Ahmedabad Municipal Corporation issued a letter to the petitioner society stating that for plot No.4 high rise construction plan was submitted and if the society has any objection the same may be intimated. In response to said letter the petitioner society addressed a letter dated 17.1.2000 to the Asst.TDO, Ahmedabad Municipal Corporation stating that there are outstanding municipal taxes of about Rs.36,000/- and as proper persons have not signed, the society is objecting to the sanction of plan and therefore same may not be sanctioned

5. The petitioner society filed Civil Suit No.330/00 in the City Civil Court at Ahmedabad as well as respondent No.2 & 3 herein challenging the action for utilising the property for commercial use of the property by respondent Nos 2 & 3 and Notice of Motion being No.1510/00 was also preferred below which exparte interim relief against the Ahmedabad Municipal Corporation was granted by the City Civil Court on 6.6.2000. Initially, the petitioner society who was plaintiff in the aforesaid Civil Suit did not join respondent Nos 2 & 3 as party and thereafter subsequently after the exparte injunction was granted they were joined as party. Upon the inquiry made by the court about the status of the suit it is declared before the court that respondent Nos 2 & 3 have submitted a pursis before the City Civil Court that they are withdrawing plans for commercial use and construction and therefore the Notice of Motion is accordingly disposed of and the civil suit is pending before the City Civil Court, Ahmedabad. Pending the civil suit before the City Civil Court at Ahmedabad on 12.6.2000 immediately after obtaining exparte interim injunction from the City Civil Court with a view to create a clog over the title over

the property the present pettiion is filed by the pettiioner society challenging the letter dated 2.11.1998 of the District Registrar referred to hereinafter whereby the District Registrar had communicated to the petitioner society that since the probate has been granted by the City Civil Court, Ahmedabad the respondent Nos 2 & 3 are the trustees of Plot No.4 and therefore necessary action may be taken for entering their names as members.

6. Mr.Mihir Joshi appearing for the petitioner submitted that the letter dated 2.11.1998 is in breach of principles of natural justice and in his submission the only source of power for issuing said letter is under section 11 and since no hearing has been given to the society the letter which is titled by him as order in his submission is void. Mr.Joshi further submitted that as per section 22(1)(f) of the Act only public trust can become member of a society and private trust can not become a member. He further submitted that the trustees who are admitted as members or in whose name the shares have been transferred can not be said to be individual/individuals competent to contract under Indian Contract Act and therefore can not be admitted as member of a society even under section 22(1)(a) of the Act. In furtherance of his submission Mr.Joshi submitted that the trustees are not becoming members in their individual capacity but they are becoming members as trustees and Mr.Joshi submitted that the trustees are only nominal owner of the property and the real owners are the beneficiaries and therefore Mr.Joshi submitted that even the beneficiaries of the trust must also be the persons who are competent to contract and in his submission if such interpretation is not made things which can not be done directily will be permitted to be done indirectly and therefore Mr.Joshi submitted that as per section 22(1)(a) of the Act the trustee and the beneficiary, both must be competent to enter into contract. Mr.Joshi relied upon the decision of the Bombay High Court in the matter of Shri Govardhandhari Devasthan, Kopargaon vs Collector of Ahmednagar reported in AIR 1982 Bom 332 and of the Apex Courtin the matter of State Bank of India vs Special Secretary, Land & Land Revenue & Reforms & Land & Land Utilisation Department of West Bengal reported in 1995 Supp(4) SCC 30 to contend that the trustees are only nominal owners and the beneficiaries are the real owners. Mr.Joshi submitted that in any case so far as the Housing Coop.Societies are concerned the trustees can not be admitted as members because the Housing Coop.Society is a need based society and so far as the trustees are concerned they have no need of their own and Mr.Joshi also relied upon some observations of International

Cooperative Alliance to submit that the membership should be granted to only those persons who are in need of that and can contribute to the objects of the society. Mr.Joshi further submitted that as per the information of the petitioner one of the trustees is a French citizen and merely because the Reserve Bank has granted permission to function as the trustee, he does not become Indian domicile, therefore also, since he is not an Indian citizen he can not be a member of the society.

7. Mr.Girish Paqtel, Ld.Senior counsel appearing with Mr.S.N.Mehta for the respondent Nos 2 & 3 submitted that in reality the letter dated 2.11.1998 is not a mandatory order but is a letter in the form of opinion. Mr.Patel further submitted that the whole petition is nothing but a counterblast to the submission of construction plan by the respondent Nos 2 & 3, though the respondent Nos 2 & 3 subsequenjtly have withdrawn such plan. Mr.Patel submitted that there are large number of suppression of material facts in the petition including the documentary evidence of correspondance between the petitioner society and respondent Nos 2 & 3. Mr.Patel further submitted that the impugned letter which is in the form of opinion was invited by the petitioner society itself and not only that but the said opinion is accepted by the petitioner society, and thereafter, on 18.11.1998 the Managing Committee of the society has admitted the respondent Nos 2 & 3 as members and they have transferred the shares and not only that but the respondent Nos 2 & 3 continued to function as the members of the petitioner society and under the circumstances the society can not complain that the impugned letter is in breach of principles of natural justice. Mr.Patel further submitted that not only this petition is barred by delay and laches but there is also malafide intention on the part of the petitioner society to challenge the action after a period of about 19 months and in his submission in reality section 11 has no applicability and he further submitted that even if the order is void or the action is void in view of the conduct of the petitioner, the petitioner is not entitled to invoke the equitable jurisdiction of this court under Article 226 of the Constitution. Mr.Patel further submitted that section 22 is for all Cooperative society and that interpretation can not be restricted keeping in view Housing Cooperative Society. Mr.Patel further submitted that the trustees are the owners of the property so far as the world at large is concerned save and except the beneficiaries of the trust. Mr.Patel further submitted that the trustees are individuals competent to contract and they are bound by the provisions of the Act, Rules and Byelaws and

keeping in view the objects of the Act it must be interpreted that all the individuals may be in different capacity can be admitted as members and in his submission there is nothing in the Act to prohibit the trustees as the owners of the trust property. Mr.Patel further submitted that there is no rationale in putting such restriction upon the word "individual" because the trustees are the individuals who are acting in furtherance of the trust deed. Mr.Patel submitted that if the interpretation results into public policy then only the restricted meaning can be given and in the submission of Mr.Patel the HUF and the trustees are at par. Mr.Patel submitted that the Division Bench of this court has taken a view in the matter of Jain Merchants Coop.Housing Society Ltd vs HUF of Manubhai Kalyanbhai Shah through its Manager Harishbhai Manubhai Shah reported in 36(1) GLR 19 that even the HUF is included in the word "individual" and therefore in the submission of Mr.Patel there is no reason to exclude the trustees who are in reality individuals for holding the property and even for the larger interest of the beneficiaries. Mr.Patel submitted that if the contention of Mr.Joshi is accepted that if the beneficiaries are not competent to contract the trustees can not be admitted as members would create not only chaotic situation but would be against the larger public interest in as much in the given case if the trust is created for the benefit of minor, the trustees will not be able to hold the property and can not use the same and therefore if such interpretation as canvassed by Mr.Joshi should not be accepted. Mr.Patel submitted that the interpretation of word "individual" in section 22 of the Act can not given keeping in viewq only the properties of the Housing Cooperative Society when the Act provides a general clause. Mr.Patel submitted that when the permission is granted by the Reserve Bank of India to respondent Nos 2 & 3 to include as trustees as per the trust deed they can not be said to be improper trustees and in any event such objection can be heard by the court only if the beneficiaries are complaining about the same. Mr.Patel submitted that so far as the society is concerned it can not raise any objection regarding the capacity of the trustees, more particularly, when the probate has been granted by the competent court. Mr.Patel lastly submitted that since this petition is preferred with malafide purpose and there are large number of suppression of material facts, in his submission, the same are sufficient to dismiss the petition and therefore he prayed for dismissal of the petition.

8. Mr.I.M.Pandya, Ld.AGP appearing for the District

Registrar submitted that the District Registrar has only given instruction which is not an order and it is not compulsory to the society to follow the same. Mr.Pandya mainly adopted the arguments on the question of interpretation of section 22 of the Act and also on the conduct of the petitioner society as canvassed by Mr.Patel.

9. In view of the above rival contention of the parties the following questions arise for consideration of this court:

(i) Whether the trustees who are individuals can become members of the society registered under the provisions of Gujarat Cooperative Societies Act?

(ii) Whether it is open to the Society to challenge the status of the person as the member once after the society having admitted the person as a member?

(iii) Whether the person can be permitted to invoke the jurisdiction of this court under Article 226 of the Constitution who is a party to the voluntary action under challenge?

10. As regards first question for is concerned sections 22 (1) and 22(2) of the Act reads as under:

"22(1) Subject to the provisions of sectioan 25 no person shall be admitted as a member of a society except the following, that is to say---

(a) an individual, who is competent to contract under the Indian Contract Act, 1872;

(b) a firm, company or other body corporate constituted under any law for the time being in force, or a society registered under the Societies Registration Act, 1860;

(c) a society registered, or deemed to be registered under this Act;

(d) the State Govt.,

(e) a local authority;

(f) a public trust registered or deemed to have been registered under Bombay Public Trusts Act, 1950;

Provided that the provisions of clause (a) shall not apply to an individual seeking admission to a society exclusively formed for the benefit of students of a school or college;

Provided further that subject to such terms and conditions as may be laid down by general or special order (a firm or a company or other body corporate as constituted under any law for the time being in force) may be admitted as a member only of such society as may be prescribed."

"22(2)(a) Every person seeking admission as a member of a society of such class as may be notified by the State Govt in the official gazette in this behalf, shall, if he is duly qualified for membership of such society under the provisions of this Act, the rules and byelaws of the society, be deemed to have become a member of such society on the date of receipt by the society of the appalication for admission made by such person.

(b) Where such society refuses to accept the application for admission as a member, or the payment in respect of membership made by such person, such person may tender such application, together with payment in respect of membership, if necessary, to the Registrar, who shall, on receipt of the same, forthwith, forward them to the society concerned and thereupon such member shall be deemed to have become a member of such society on the date of receipt by the society of such application and the payment for the membership, if any, from the Registrar.

(c) Where the society is of the opinion that such person is not qualified for being a member of the society or that he may not be continued as its member, such society may, within a period of three months from the date of receipt of his application for admission under clause (a), or, as the case may be, clause (b), move the

Registrar by an application in writing stating all grounds in support thereof, for a declaration, that such person shall cease to be its member with effect from such date as may be specified by the Registrar, in such declaration.

(d) On receipt of the application under clause (c), the Registrar shall after making such inquiry as he thinks fit and for reasons to be recorded in writing make an order either rejecting the application of the society or accepting the application of the society and declaring that such person shall cease to be its member with effect from such date as may be specified in such order;

Provided that no order accepting the application of the society and making a declaration as aforesaid shall be made by the Registrar under this clause unless an opportunity of being heard is given to the person concerned.

(e) The decision of the Registrar under clause (d) shalla be final and shall not be called in question in any court."

Section 22(3) which is also relevant for the purpose of this petition reads as under:

"22(3) Nothwithstanding anything contained in subsection (1) the State Govt, may, having regard to the fact that the interest of any person or class of persons engaged in or carrying on any profession, business or employment conflicts or is likely to conflict with the objects of any society or class of societies by general or special order published in the official gazette, declare that such class of persons shall be disqualified from being admitted, or for continuing, as member or members or shall be eligible for membership only to a limited extent, of any society or class of societies, so long as such person or persons are engaged in or carry on that profession, business or employment, as the case may be."

11. In view of the above, it is apparent that as per section 22(1)(a) any individual who is competent to contract under the Act can become member except a person

seeking admission to a society exclusively formed for the benefit of students of a school or college and or the State Govt has made a declaration as per subsection 22(3) that such person or class of persons shall be disqualified from being admitted as members. Aforesaid are the only two restrictions provided by the first proviso of subsection 22(1) so far as the individual is concerned and his disqualification by way of declaration in the official gazette as per subsection 22(3) so far as clauses (a) to (f) are concerned. It is not the case of the petitioner that any disqualification has been made under subsection 22(3) by the State Govt qua the trustees to become members in a Housing Cooperative Society nor it is the case of the petitioner that the petitioner society is formed exclusively for the benefit of students of a school or college. Under the circumstances, none of the categories mentioned in clauses (a) to (f) of section 22(1) will operate in all respects in all fields. So far as section 22(1)(f) is concerned a public trust registered or deemed to have been registered under the Bombay Public Trusts Act, 1950 is given a special category because such trusts are governed by the Bombay Public Trusts Act and it is such public trust which can become member of the society on their own name. Merely because only public trusts are recognised under clause (f) of Section 22(1) it can not be said that the trustees of other private trusts who are otherwise individuals would to fall outside the clause (a) of subsection (1) of section 22. A trust which can not otherwise become member because it is not the legal entity, but is given a status to become member by virtue of clause (f) of section 22(1). So far as public trusts, governed by the provisions of Bombay Public Trusts Act are concerned, they can not be admitted as members because the trust is not a legal entity, but by provision of section 22(1)(f) they are made eligible to be admitted as members of their own. In a case when the persons who are individuals in capacity of trustees of private trust are to be admitted as members of the society, clause (a) of section 22(1) would be appalicable and clause (f) of section 22(1) can not be made applicable. Therefore, the contention of Mr.Joshi that only public trusts are eliogible is ill-founded and deserves to be rejected. The examination of the status of Trustees of the Trust can be made in view of the provisions of Indian Trust Act and the case law on the subject.

Sectilon 3 of Indian Trust Act reads as under:

"3. Interpretation-clause-- "Trust"

A "trust" is an obligation annexed to the ownership of property and arising out of confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

the person who reposes or declares the confidence is called the "author of the trust" the person who accepts the confidence is called "trustee"; the person for whose benefit the confidence is accepted is called the "beneficiary"; the subject matter of the trust is called "trust property" or "trust money"; the benefit "beneficial interest? or "interest" of the beneficiary is his right against the trust as owner of the trust property; and the instrument, if any, by which the trust is declared is called the "instrument of trust";

12. In the case of W.O.Hol Sworth and others vs The State of Uttar Pradesh reported in AIR 1957 SC 887 at para 19 the Apex Court has observed as under:

"19.A trustee is thus usually the legal owner of the trust property or the trust estate and holds it for the benefit of the cestui que trust."

Further at para 23 the Apex Court observed as under:

"23. These definitions emphasise that the trustee is the owner of the trust peroperty and the beneficiary only has a right against the trustee as owner of the trust property. The trustee is, thus, the legal owner of the trust property and the property vests in him as such. ...."

Therefore, the trustee is the owner of the property as per the Trust Act for all purposes with obligation for him to use his property as per the trust deed. In view of provisions of Trust Act the trustee holds the capacity as the owner of the trust property so far as the public at large is concerned and there is also an obligation cast upon him and the duty qua the beneficiary of the trust. If the dispute is raised in respect of the property of the trust by any one person

other than the beneficiary then the trustee for all purposes is the owner to represent the property. However, if the dispute is raised by the beneficiary then the trustee can not claim his personal interest in the property. In this manner, the trustee is holding the property as the owner qua the public at large and is also to bear the responsibility by way of obligation qua the beneficiary of the trust is concerned. In the present case the petitioner have not challenged the action of the trust contending that the trustees have set up the title adverse to them or rather are using the property against their interest. In the present case the society which is a third party is challenging the status of the trustee as the owner and therefore so far as the petitioner society is concerned it is bound to accept the trustee as the owner more particularly when the probate has been issued in favour of respondent Nos 2 & 3 by the competent court whereby the respondent Nos 2 & 3 are authorised to function as executor of the will and as a consequence thereof they are appointed as the trustees of the property in question. The reliance placed by Mr.Joshi upon the judgment of the Bombay High Court in the case of Govardhandhari Devasthan, Kopargaon vs Collector of Ahmednagar (Supra) on the contrary shows that even the Division Bench of Bombay High Court in para 13 of the aforesaid judgment observed as under:

> "In legal theory, no doubt, the position of the trustee is that of an owner subjected to the obligation by the instrument of trust to apply and use the property vested in him for the purpose and for the benefit of then real owner. Between the trustee and the beneficiary, in substance, the property belongs to the beneficiary, though for its application and use it vests in the trustee. However, qua third person, fiction of ownership continues to prevail in favour of the trustee."

So, the facts of the case clearly shows that so far as the status of the petitioner is concerned, it is that of a third party and, in any case, is not that of a beneficiary of the trust. Therefore, the fiction of ownership continues to prevail in favour of trustee so far as the petitioner-society is concerned and, therefore, there is no force, whatsoever, in the contention of Mr.Joshi representing the petitioner society, which is a third party, that the trustees are not the owners of the property of the trust. Therefore, the reliance placed by Mr.Joshi upon the aforesaid

judgment of the Division Bench of the Bombay High Court on the contrary supports the case of the respondent Nos 2 & 3 and is of no help to the petitioner.

13. In case of State Bank of India (supra) the Apex Court was considering the scheme of the provisions of Urban Land (Ceiling & Regulations) Act, 1976. In the said judgment at para 7 the Apex Court observed that the object of the Act is to take over the urban land found in excess of the ceiling area and to utilise the same for the public good. The vacant land found in excess of ceiling area which become entitled to the benefit or exemption under section 19 or under section 20 as seen therefrom are those vacant lands which are meant to serve public purpose and not private purpose. Therefore, anyone who is entrusted under a private trust to discharge certain duties as trustee thereof, can not claim exemption respecting the property of that trust under section 19(1)(iv) related to public charitable trust or religious trust. The Apex Court, in the said case, was concerned with as to whether the trust would eneitlted to claim exemption under section 19 of the ULC Act or not. Keeping in view the scheme of the Act, the corut observed that that the bank can not be said to hold the property as owner as envisaged under section 19 of the ULC Act. Therefore, the reliance placed by Mr.Joshi upon the aforesaid judgment of the Apex Court is of no help to the petitioner.

14. In view of the above discussion, it is apparent that the trustees of the private trust are the owners of the property qua the public at large, save and except, their duty to the beneficiary and therefore the trustees are the lawful owners of the property and they have right to represent the title of the property of the trust. There is no dispute on the point that the respondent Nos 2 & 3 are not the individuals. Therefore, as per the provisions of Section 22(1)(a) of the Act all individuals competent to contract are eligible to become members of the society. As per well settled principles of interpretation of the statute, when plain and simple meaning can be extracted from the language of a statute or the provisions of the Act, there is no reason for the court to take add the words and/or to restrict the meaning of any word unless it is against the public policy. There is, therefore, considerable force in the contention raised by Mr.Patel in as much as the provisions of Section 22 are for all types of cooperative societies and therefore while giving interpretation to the provisions of section 22 it can not be interpreted keeping in view its applicability qua the Housing

Cooperative Society only. Therefore, the reliance placed by Mr.Joshi upon some of the observations of the International Cooperative Alliance can not be taken into consideration since the basis of his contention is keeping in view the Housing Cooperative Society. When the legislature has provided the word "individual" in respect of all Cooperative Societies, I do not find any justification to give restricted meaning to the word "individual" competent to contract as provided under section 22(1)(a) of the Act. Therefore, it is apparent that the individuals competent to contract irrespective of their capacity as trustees or otherwise would be eligible to be admitted as members. The capacity of beneficiaries of the trust who are not to represent the property as owner is not at all to be considered because the trust who is owner of the property is to be admitted as member in the society and not the beneficiaries. However, so far as the respondent No.2 is concerned, the grievance is voiced by the petitioner that he is a France citizen and therefore he can not be said to be an Indian domicile, and therefore, he can not act as a trustee or can not be said to be an individual competent to contract. The scrutiny of this contention shows that section 22(1)(a) does not provide that the individual should also be an Indian citizen. What is provided is that the individual competent to contract under the Indian Contract Act is eligible to be admitted as member. Section 11 of the Indian Contract Act, 1872 reads as under:

> "11.Who are competent to contract:--Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is sound mind and is not disqualified from contracting by any law to which he is subject."

15. Therefore, there is no prohibition under section 11 of the Indian Contract Act that a foreign citizen or a person who is not an Indian citizen or Indian domicile from becoming competent to contract. Only the requirement is that he should be of the age of majority according to law to which he is subject and he should not be disqualified from contracting by any court to which he is subject. It is not the case of the petitioner that the respondent No.2 is not of the age of majority nor it is the case of the petitioner that the respondent No.2 is disqualified from contracting by any law to which he is subject except to the extent that as per the Indian Trust Act if a person is a non resident and has to function as

a trustee the permission of the Reserve Bank of India is required. In the present case, it is an admitted fact that the Reserve Bank of India has granted permission to the respondent No.2 to function as trustee and therefore in view of the above it can not be said that the respondent No.2 is not an individual competent to contraqct and therefore the contention of Mr.Joshi on the aforesaid aspect deserves to be rejected.

16. In view of the above discussion, it is clear that the trustees who are individuals competent to contract are eligible to be admitted as members of the society as per section 22(1)(a) of the Gujarat Cooperative Societies Act and therefore the finding on the first question has got to be in affirmative and is in affirmative.

17. To deal with the question Nos (ii) and (iii), if the provisions of Gujarat Cooaperative Societies Act are considered, it transpires that the Chapter III provides for the Members and their Rights and Liabilties.

Section 22 provides for the eligibility of persons to be admitted as members.

Section 23 provides for removal of membership in certain cases. A perusal of section 23 shows that if any person becomes a member of any society upon his declaration which is found to be false then he can be disqualified to continue as member but the power of removal is vested with the Registrar and the Registrar has to follow the procedure as provided under section 23 including that of giving opportunity of hearing etc.

Section 26 of the Act provides for cessation of membership by tendering resignation or by transfer of whole of his share or interest in the society to another member, or upon his death or removal or expulsion from the society.

Section 36 of the Act provides for expulsion of members by 3/4th majority, that too by following the procedure as provided.

18. Therefore, a perusal of aforesaid relevant provisions of the Act shows that once the person is admitted as a member, his voting right can be restricted but he can be removed as a member or that he can be declared as ceased to be the member or he can be expelled as the member only if the condition precedent as provided under respective sections, i.e. secions 23, 26 or 36, as the case may be, are followed. So far as sections 23 &

26 are concerned they are not within the powers of the society, but section 36 can be resorted to by the general body of the society if the conditions precedent are satisfied. Therefore, it is clear that once a person is admitted as a member, it is not open to the society to remove such person as a member except the statute so authorises as indicated hereinabove or other provisions of the Act. If the law does not provide for removal or expulsion by anyother mode, the society can not be permitted to create a situation which results into cessation of the rights of a member and such mode can not be permitted by challenging the status of a person subsequently on the ground of eligibility as a member once having taken decision of admitting such person as a member, more particularly, in the facts of the present case.

19. If the aforesaid are taken into consideration and upon examining the facts of the present case, it transpires that after the request was made by respondent Nos 2 & 3 to become members of the society, the matter was deliberated and considered by the petitioner society. Not only that but an opinion was requested from the District Registrar. When the opinion was solicited by the society itself, which is a party inviting the opinion, it can not complain that there is breach of principles of natural justice. Not only that but even if it is accepted that the District Registrar passed the order which made the petitioner society to admit the respondent Nos 2 & 3 as members, then also the fact remains that the petitioner society had accepted the instructions/order, dated 2.11.1998 issued by the District Registrar. If the petitioner society had any grievance, it could very well challenge the instructions/order dated 2.11.1998 before the higher forum complaining of breach of principles of natural justice. However, the petitioner society has chosen not to challenge the said instructions/order. Not only that but after the said instructions/order dated 2.11.1998, on 18.11.1998 in the meeting of the Managing Committee of the society, it has been resolved, intealia, to act as per the instructions/order dated 2.11.1998 of the District Registrar and also to transfer the share by admitting respondent Nos 2 & 3 as members. Further, after the resolution, dated 18.11.1998 of the Managing Committee, letter dated 18.12.1998 is also issued by the petitioner society to act upon the resolution dated 18.11.1998. Thereafter, it is admitted position that the respondent Nos 2 & 3 are admitted as members of the petitioner society and the shares are transferred and necessary fee is also accepted by the petitioner society

from the respondent Nos 2 & 3. The aforesaid clearly shows that there are more voluntary actions then merely acting upon the instructions/order of the District Registrar. Once the aforesaid procedure was completed, as back as in the month of December, 1998, it is not open to the petitioner society to contend that before passing the order/instruction dated 2.11.1998 the principles of natural justice are not followed. It is well settled principle of law that the observance of principles of natural justice vary from case to case and the court may decline to consider the complaint for breach of principles of natural justice if the person concerned has accepted the order and the rights of the parties are also substantially altered. In the present case, the District Registrar has filed an affidavit contending that as per letter dated 2.11.1998 the instructions were issued and therefore it is not an order but even if the contention that it was in the nature of order is accepted, then also the society having thoroughly accepted the order and not only that but the society havign implemented the order, now can not raise the contention legitimately that the instructions/order were issued without giving any opportunity of hearing to the petitioner society.

At this stage, it would worthwhile to refer to the observations of the Apex Court at para 12 of the judgment in the case of Roshan Deen vs Preetilal reported in (2002) 1 SCC 100:

"The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such injustice in the name of correcting the error of law."

Therefore, in the result, the contention of Mr.Joshi for the breach of the principles of natural justice and therefore to set aside the order can not be accepted and hence rejected.

20. The second aspect which is required to be considered is the voluntary action of the petitioner

society and its conduct. In the present case, as observed above, it has come on record that the petitioner society has voluntarily not only accepted the impugned instructions/order dated 2.11.1998 but has gone a step further by passing the resolution at its Managing Committee meeting, dated 18.11.1998 and further voluntary act of transferring the shares in the name of respondent Nos 2 & 3 and admitting them as members of the society by implementing the resolution dated 18.12.1998 and not only that but after December, 1998 for a period of about 19 months the respondent Nos 2 & 3 are permitted to functionas members of the society, without any challenge, whatsoever, by the petitioner society until the present petition is preferred. It also appears that on account of the submission of plan by the respondent Nos 2 & 3 for construction of high rise building for commercial use as a counterblast the present petition is preferred for creating a clog over the title of the property. Therefore, the present litigation initiated by the petitioner society does not appear to be bonafide, but assuming for the sake of argument that it lacks malafide then also the reality is that the society has not only accepted the instruction/order but also has acted upon the same and the rights are transferred pursuant to that voluntary action of the society in favour of respondent Nos 2 & 3 qua the property in question and same is also allowed to continue voluntarily for a period of 19 months and thereafter at that stage the challenge is made to the impugned order/instruction so as to create a situation of doubt upon the status of respondent Nos 2 and 3 as the members of the society and thereby to create a clog over the property of the respondent Nos 2 & 3 as trustees of and members. If the party to voluntary action is permtited to challenge the order/instruction subsequently under the pretext of breach of principles of natural justice or under the pretext of any illegality the same would frustrate the basic intention of advancing cause of justice. As observed earlier, in view of provisions of the Act, more particularly, sections 22 to 36 of the Act, once the person is admitted as member, the status of the member can not be extinguished or removed or expelled by the society, save and except, the popwer and procedure laid down under the Act. If the law does not provide for taking away the membership right of a person who is admitted as a member, the society can not be permitted to challenge the status subsequently by raising contentions that the person concerned was not eligible to be admitted as member or that they acted upon the instructions which were issued in breach of principles of natural justice. As a matter of fact, it has come on record that the petitioner society itself is a party to the voluntary

action of admitting the respondent Nos 2 & 3 as members and therefore the conduct of the petitioner society disentitles it to invoke the writ jurisdiction of this court. Even if it is assumed for the sake of argument that there is breach of principles of natural justice or breach of provisions of law or procedure then also in view of the fact that the society is party to the voluntary action and the rights of the parties are altered on account of such voluntary action the court should refuse to exercise its discretionary jurisdiction/power under Articles 226/227 of the Constitution.

21. At this stage, it is worthwhile to refer to the observations of the Division Bench of this court in the case of Saurashtra Paper and Board Mills Pvt.Ltd Rajkot vs State of Gujarat reported in 1992(2) GLR 871 wherein at para 15 after relying on the observations of the Apex Court in the case of Keval Krishna Puri vs State of Punjab & Ors reported in AIR 1980 SC 1008 the Division Bench observed as under:

> "It has been rightly observed that legal formulations can not be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tampered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction.

22. Keeping in view the above, I have no hesitation in coming to conclusion that it is not open to the petitioner society to challenge the status of respondent Nos 2 & 3 who are already admitted as members of the petitioner society and the petitioner society can not be permitted to invoke the jurisdiction of this court under Article 226 of the Constitution of India and in any case in view of the aforesaid aspects of the case, this court refuseas to exercise its powers under Article 226 of the Constitution.

23. In the result, petition fails and rule is discharged with no order as to costs.

29.4.12002 (JAYANT PATEL,J)